APX International, formerly AERO Detroit, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–39580

July 10, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on March 10, 1997, the General Counsel of the National Labor Relations Board issued a complaint on April 28, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 7–RC–20200. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On June 9, 1997, the General Counsel filed a Motion for Summary Judgment. On June 11, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 23, 1997, the Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of the Board's disposition of a challenged ballot in the representation proceeding. In addition, the Respondent's answer denies that the information requested by the Union is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.[1] The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. In its October 25, 1996 letter, the Union requested the following information from the Respondent: an up-to-date list of all employees working, on leave-of-absence, or laid off (if applicable), including their name, sex, marital status, address, social security number, and date of employment; information regarding wage rates, classifications, vacation, pay schedules, hospitalization and medical coverage, pension and severance plans, paid holidays, employee handbook, and any other benefits received by employees; and the costs of the plans. Although the Respondent's answer denies that the requested information is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit, it is well established that, with the exception of the employees' social security numbers, such information is presumptively relevant for purposes of collective bargaining and must be furnished on request.[2]

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information with the exception of social security numbers.[3]

On the entire record, the Board makes the following

[1] The Board's decision in the underlying representation proceeding and consolidated unfair labor practice proceeding with respect to the challenged ballot is published at 321 NLRB 1101 (1996). In its response to the Notice to Show Cause, the Respondent requests that the Board defer action on the General Counsel's Motion for Summary Judgment in the instant case until the U.S. Court of Appeals for the Sixth Circuit has ruled on the Respondent's pending petition to review the Board's finding in the prior unfair labor practice proceeding that the challenged voter (Huddleston) had been unlawfully discharged in violation of Sec. 8(a)(3) of the Act. The Respondent's request is denied. See *Midland-Ross, Inc.*, 243 NLRB 1165, 1166 (1979), enfd. 653 F.2d 239 (6th Cir. 1981).

[2] The Board has held that employee social security numbers are not presumptively relevant and that the union must therefore demonstrate the relevance of such information. See, e.g., *Dexter Fastener Technologies*, 321 NLRB 612 (1996); *Maple View Manor*, 320 NLRB 1149 (1996); and *Sea Jet Trucking Corp.*, 304 NLRB 67 fn. 1 (1991). Here, the record fails to indicate why the Union wanted the social security numbers or otherwise establish the relevance of the numbers. Accordingly, we cannot conclude that the Respondent was obligated to provide the numbers to the Union. This does not excuse the Respondent's failure to supply all of the other information requested by the Union, however. Such information is clearly relevant and the Respondent's failure to provide the information on request violated Sec. 8(a)(5) of the Act. See id.

In agreeing that the Respondent is obligated to provide the other information requested by the Union, Member Higgins notes that the Respondent has not specifically contended that the employees' "marital status" is not presumptively relevant information.

[3] Member Fox and Member Higgins did not participate in the underlying representation or consolidated unfair labor practice proceeding. However, they agree that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing, and that summary judgment is appropriate.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business at 29333 Stephenson Highway, Madison Heights, Michigan (the Madison Heights facility), has been engaged in the manufacture of automotive body panels and related parts.

During the year ending December 31, 1996, a representative period, the Respondent, in conducting its business operations, received goods valued in excess of $50,000 which were shipped directly to its Madison Heights facility from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held January 6, 1994, the Union was certified on October 1, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its Madison Heights facility, including mold employees, paint employees, tool repair and maintenance employees, wet sand employees, quality control employees, and shipping and receiving employees; but excluding office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since October 25, 1996, the Charging Union has requested the Respondent to bargain and to furnish information, and, since about the same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after October 25, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested with the exception of employee social security numbers.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, APX International, formerly AERO Detroit, Inc., Madison Heights, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its Madison Heights facility, including mold employees, paint employees, tool repair and maintenance employees, wet sand employees, quality control employees, and shipping and receiving employees; but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on October 25, 1996, with the exception of employee social security numbers.

(b) Within 14 days after service by the Region, post at its facility in Madison Heights, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 10, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:.

> All full-time and regular part-time production and maintenance employees employed by Respondent at our Madison Heights facility, including mold employees, paint employees, tool repair and maintenance employees, wet sand employees, quality control employees, and shipping and receiving employees; but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union with the information that it requested on October 25, 1996, with the exception of employee social security numbers.

APX INTERNATIONAL, FORMERLY AERO DETROIT, INC.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."